

REMARKS/ARGUMENTS

Applicant notes with thanks and appreciation the Examiner's indication of allowable subject matter in claim 9. Regarding the rejections of claims 1-3, 5, 7, 10-25, and 28-31, Applicant respectfully requests reconsideration and continued examination of this application in view of the above amendments and the following remarks.

1. Status of the Claims

Claims 1-3, 5, 7, and 9-37 are pending in this application.

Claim 17 has been amended, and new claim 32 added, to clarify the structure and function of the pouring device and to recite that the strand has an at least substantially uniform and at least substantially circular cross section.

Claim 20 has been amended to recite forming a cap with a cylindrical longitudinal extent adapted to be sealingly inserted into the lower portion.

New claims 33-37 have been added to further clarify additional features of the claimed invention.

Support for these amendments is found, for example, in Figures 1-5 and paragraphs 30 and 43 of the original specification.

No new matter has been added.

2. Claim Rejections Under 35 U.S.C. § 112

Applicant respectfully traverses this rejection, noting that, as the Examiner has previously acknowledged, claim 1 only requires that the pouring device be adapted to be sealed by a suitable cap, so that claims 14-17 (and now claim 28) further limit claim 1 by actually requiring that such a cap be included with the pouring device. In view of the foregoing, Applicant respectfully requests that this rejection be withdrawn again.

3. Claim Rejections Under 35 U.S.C. § 103(a)

a) 103(a) Rejections over Jiang in view of Pham

Claims 1-3, 5, 7, 10-25 and 28-31 have been rejected under 35 U.S.C. § 103(a) as obvious over U.S. Pat. No. 4,637,530 to Jiang ("Jiang") in view of U.S.

Pat. No. 5,228,603 to Pham et al. ("Pham"). Applicant respectfully traverses this rejection.

All of the subject claims were rejected on the same basis in the prior Office Action. At the outset, Applicant respectfully submits that the reasoning of the present rejection overlooks certain claimed elements of Applicant's invention and certain key points of Applicant's previously submitted arguments.

For example, the Examiner stresses that Pham discloses a diagonal screen 110 across the neck of apparatus 100 shown in Figure 6 and screens 126-138 in various locations of the apparatus 120 shown in Figure 7, Figures 6 and 7 being reproduced below:

FIG. 6

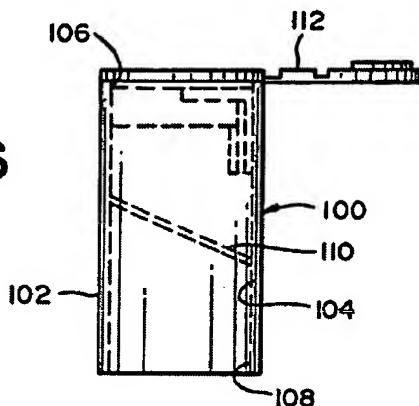
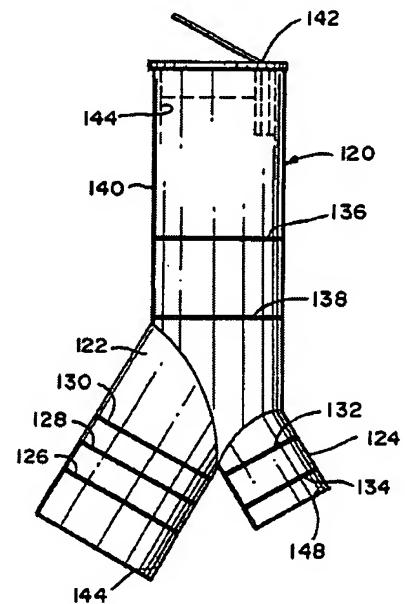


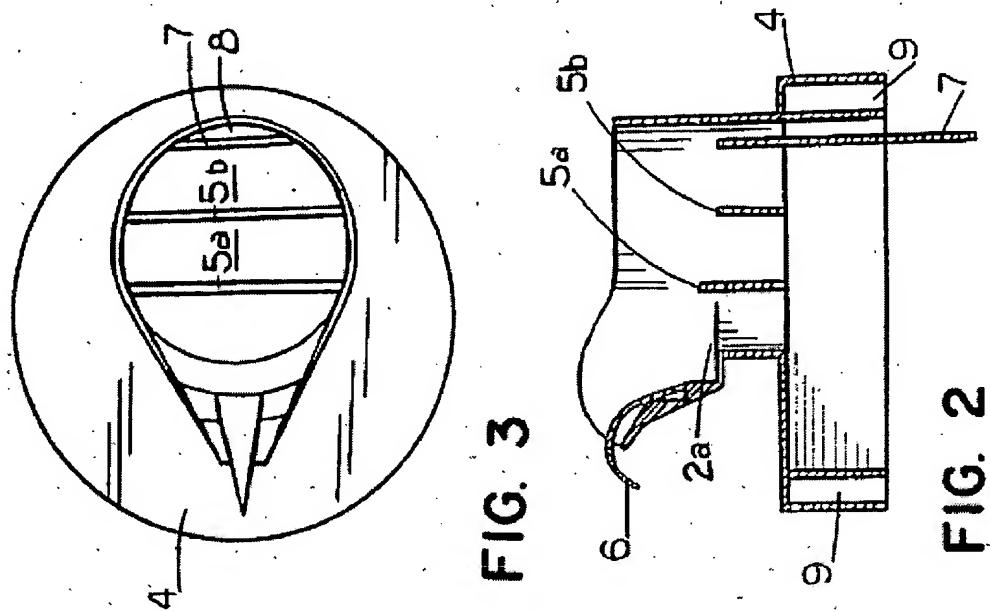
FIG. 7



Applicant acknowledges that Figures 6 and 7 of Pham depict screens disposed in apparatus 100 and 120. However, Applicant maintains that Pham wholly fails to disclose a pouring device comprising a pouring filter that is either integrally formed with or coextensive with an air passageway, both of which are required limitations of the filter and air passageway in the pouring device of the present invention.

Additionally, the Examiner asserts, "[i]n response to applicant's argument" that a cylindrical extent of a cap could not seal the pouring spout of Jiang "because it would interfere with element 6," that the cylindrical extent would

merely have to extend axially below element 6 to seal the pouring spout. However, Applicant's argument was not based on interference with element 6 of Jiang,¹ but rather interference with plate element 5A, which extends vertically above the bottom portion of the spout of Jiang that has a cylindrical profile, as shown in Figures 2 and 3 of Jiang, reproduced below:

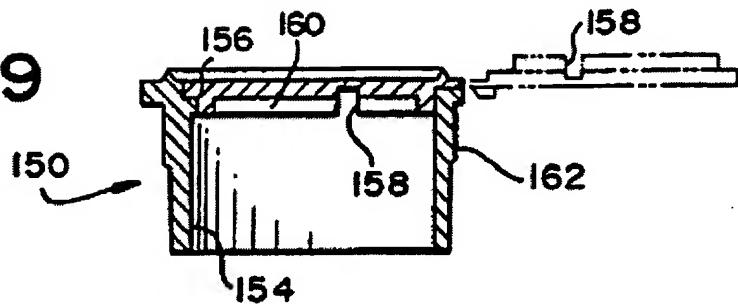


As seen in Figures 2 and 3 of Jiang above, the presence of plate element 5A renders physically impossible the Examiner's proposed solution of a cylindrical sealing extent of a sealing cap simply extending below element 6 to seal the spout of Jiang.

Nor does Pham disclose a pouring device including a cylindrical longitudinal extent of a cap inserted in sealing engagement with a lower portion of the device, as shown, for example, in Pham Figures 8 and 9, Figure 9 being reproduced below:

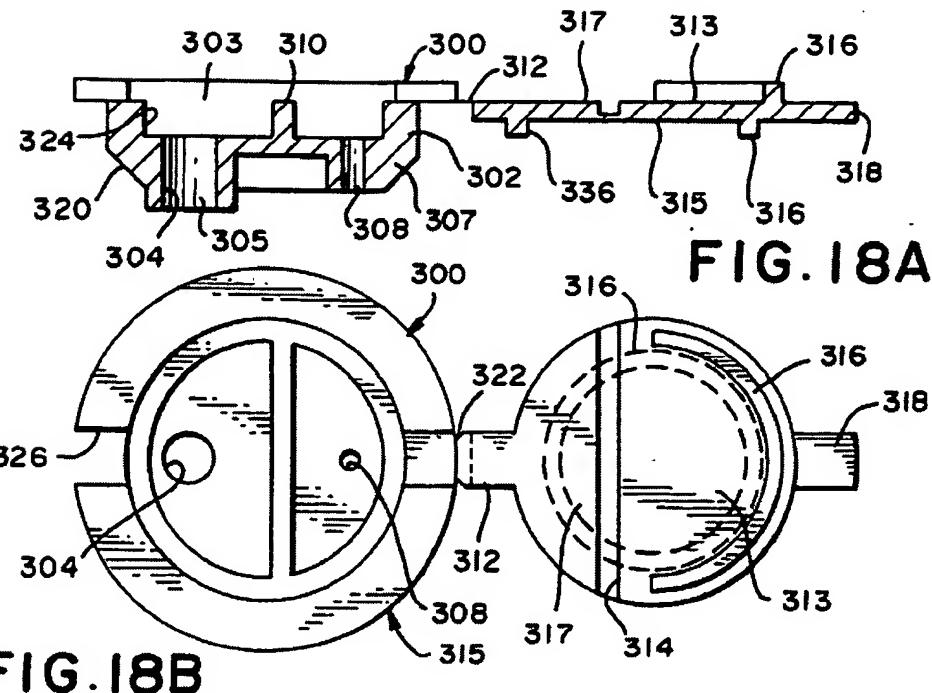
¹ See previously submitted argument below regarding claim 30, which does pertain to tongue 6 of Jiang, in addition to the irregular shape of the rim of the spout of Jiang.

FIG. 9



As is clear from Figure 9, the longitudinal extent of the cap shown is not cylindrical, but rather includes a recess 158. Pham col. 7, Ins. 28-31; see also Figs. 3A, 3B, 4B, 8 and 18A, showing this and similar recesses. Recess 158 allows a user to easily push flap 152 inwardly to release circular ridge 160; thus, Pham in fact teaches away from a cap having a cylindrical sealing extent as in pouring devices and methods of forming them according to certain embodiments of the present invention. (See device claims 14-17, 28; independent method claim 20).

Moreover, Pham wholly fails to disclose or suggest a pouring device with a cap attached by a flexible longitudinally elongated strand (device claim 17) and a flexible longitudinally elongated, cylindrical strand (see method claim 20), but rather only by a hinge, which wholly lacks a longitudinally elongated cylindrical shape, but is rather thin, longitudinally very short, and flat. See, e.g., Pham Figs. 1 - 4B, 18A, 18B, Figures 18A and 18B being reproduced below:



As is clear from Pham Figures 18A and 18B, the hinge 312 of Pham has a cross section which is neither circular nor uniform, but rather flat, and including a "weakened" area 322, to prevent the force of hinge 312 from popping the cap open, col. 8, lns. 30-35. Thus, Pham teaches away from the uniformly strong strand according to the present invention, which provides for repeated openings without breakage. See Figs. 1-4; ¶ 0042 of the original specification.

Claim 28, which depends from claim 17, further clarifies this distinction, reciting that the strand is attached at one end to a cylindrical body and at another end to a cap such that the two ends are spaced apart from each other at a distance of about the height of the upper portion when the cap is inserted in the cylindrical body, and when liquid is poured from a bottle in which the device is inserted, the strand is of sufficient thickness and rigidity to prevent the strand and cap from hanging in the path where liquid is being poured from the bottle. Claim 31 still further clarifies that the height of the upper portion, and thus the spacing of the two ends of the strand when the cap is inserted, is about 0.75 inch. This is in sharp contrast to the ends of a hinge as in Pham, which lie directly flat against each other when the hinge is closed, the "spacing" between them being

essentially zero. This construction of the present invention provides significant advantages, permitting a strand according to the invention to be of sufficient thickness to permit repeated openings and closings of the device without breakage (see ¶ 0042), and preferably to be circular in cross section, unlike the hinges of Pham which must be thin and flat, and must endure high, locally concentrated stresses associated with sharp bending. In contrast, the bending stresses in the strand of the invention are distributed along the length of the strand. This distribution of stresses permits the strand to be of sufficient rigidity to prevent the cap and strand from hanging in the pouring path during pouring, without subjecting the strand to unduly high stress concentrations when the cap is closed.

Additionally, neither Jiang nor Pham discloses or suggests a spout having an upper rim that lies at least substantially in a plane, further clarified as a horizontal plane by claim 30, such that the spout is adapted to be closed to the atmosphere by a generally planar tab included in a cap. Rather, the device of Pham wholly lacks a spout, while the pouring spout 2 of Jiang has a rim with a curved profile, which, moreover, is overlapped by a tongue member 6 that would tend to obstruct a tab of any shape from closing spout 2 to the atmosphere. Thus, Jiang and Pham fail to disclose or suggest a significant sanitary advantage of the device of the invention.

Finally, neither Jiang nor Pham, whether considered alone or in combination, disclose or provide a reason for the additional elements recited in new claims 33-41. These additional elements contribute to forming the synergistic result of a device that is easily manufactured and suitable for use as a closure and pouring attachment adapted for a wine bottle.

For at least the foregoing reasons, none of the pending claims is anticipated or rendered obvious by Jiang and/or Pham, whether considered alone or in combination.

CONCLUSION

In view of the foregoing, no single reference or combination of the cited references teaches, suggests or otherwise renders obvious the subject matter of claims 1-3, 5, 7, 10-25, and 28-37. Applicant respectfully submits that all of the rejections have thus been overcome and claims 1-3, 5, 7, and 9-37, as amended, are in condition for allowance. Accordingly, an early indication of allowance is solicited.

Respectfully submitted,

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